IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

FRACTUS, S.A. **\$\$\$\$\$\$\$\$**\$\$\$\$\$ Plaintiff, Civil Action No. 6:09-CV-203 VS. SAMSUNG ELECTRONICS CO., LTD.; JURY TRIAL DEMANDED **TELECOMMUNICATIONS SAMSUNG** AMERICA, LLP; SAMSUNG **ELECTRONICS RESEARCH INSTITUTE;** § § SAMSUNG SEMICONDUCTOR EUROPE **GMBH; LG ELECTRONICS INC;** LG ELECTRONICS U.S.A., INC.; LG ELECTRONICS MOBILECOMM U.S.A., INC.; RESEARCH IN MOTION, LTD.; RESEARCH IN MOTION CORP.; PANTECH WIRELESS, INC.; KYOCERA WIRELESS CORP.; KYOCERA **COMMUNICATIONS, INC.; HTC** CORPORATION; and HTC AMERICA, INC. § Defendants.

¹ Defendants are filing these proposed instructions and interrogatories as part of the matters required to be filed with the pretrial order. Defendants reserve the right to request such additional or supplemental instructions and interrogatories as may be necessary By submitting these requested instructions and interrogatories, Defendants are not conceding that there are any fact issues for the jury to resolve or that there is legally sufficient evidence to support the submission of any claims by the plaintiff, Fractus, S.A. Defendants expressly reserve their rights to file motions seeking judgment as a matter of law on all or some of Fractus' claims and on Defendants' defenses and counterclaims under Rule 50 of the Federal Rules of Civil Procedure.

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1 VERDICT FORM

Based on the evidence admitted at trial and in accordance with the instructions as given by the Court, we, the jury, unanimously agree to the answers to the following questions.

1.1 QUESTION NO. 1—INFRINGEMENT²

QUESTION NO. 1

a. U.S. Patent No. 7,015,868 – Claim 26

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 26 of the '868 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 26 of the
'868 Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 26 of the '868 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more likely than not) that DEF2 infringes Claim 26 of the '868 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 26 of the
'868 Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 26 of the '868 Patent
under the doctrine of equivalents:

² For the reasons set forth in their motion *in limine*, Defendants contend that no questions should be given to the jury regarding the doctrine of equivalents (DOE). The interrogatories included in this draft verdict form relating to infringement under the DOE are included only in the event this Court decides that Fractus should be permitted to submit this issue to the jury despite having not raised or argued it in any meaningful way during discovery.

b. U.S. Patent No. 7,015,868 – Claim 35

Has Fractus proven by a preponderance of the evidence (in other words, that it is more		
likely than not) that DEF1 infringes Claim 35 of the '868 Patent either literally or under the		
doctrine of equivalents? YES NO		
If you answered YES to the question above:		
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 35 of the		
'868 Patent:		
And,		
(2) Please identify which of the product(s) of DEF1 infringe Claim 35 of the '868 Patent		
under the doctrine of equivalents:		
Has Fractus proven by a preponderance of the evidence (in other words, that it is more		
likely than not) that DEF2 infringes Claim 35 of the '868 Patent either literally or under the		
doctrine of equivalents? YES NO		
If you answered YES to the question above:		
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 35 of the		
'868 Patent:		
And,		
(2) Please identify which of the product(s) of DEF2 infringe Claim 35 of the '868 Patent		
under the doctrine of equivalents:		

c. U.S. Patent No. 7,123,208 – Claim 7

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 7 of the '208 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 7 of the '208
Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 7 of the '208 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 7 of the '208 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 7 of the '208
Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 7 of the '208 Patent
under the doctrine of equivalents:

d. U.S. Patent No. 7,123,208 – Claim 12

Has Fractus proven by a preponderance of the evidence (in other words, that it is more	
likely than not) that DEF1 infringes Claim 12 of the '208 Patent either literally or under the	
doctrine of equivalents? YES NO	
If you answered YES to the question above:	
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 12 of the	
'208 Patent:	
And,	
(2) Please identify which of the product(s) of DEF1 infringe Claim 12 of the '208 Patent	
under the doctrine of equivalents:	
Has Fractus proven by a preponderance of the evidence (in other words, that it is more	
likely than not) that DEF2 infringes Claim 12 of the '208 Patent either literally or under the	
doctrine of equivalents? YES NO	
If you answered YES to the question above:	
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 12 of the	
'208 Patent:	
And,	
(2) Please identify which of the product(s) of DEF2 infringe Claim 12 of the '208 Patent	
under the doctrine of equivalents:	

e. U.S. Patent No. 7,397,431 – Claim 14

Has Fractus proven by a preponderance of the evidence (in other words, that it is more	
likely than not) that DEF1 infringes Claim 14 of the '431 Patent either literally or under the	
doctrine of equivalents? YES NO	
If you answered YES to the question above:	
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 14 of the	
'431 Patent:	
And,	
(2) Please identify which of the product(s) of DEF1 infringe Claim 14 of the '431 Patent	
under the doctrine of equivalents:	
Has Fractus proven by a preponderance of the evidence (in other words, that it is more	
likely than not) that DEF2 infringes Claim 14 of the '431 Patent either literally or under the	
doctrine of equivalents? YES NO	
If you answered YES to the question above:	
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 14 of the	
'431 Patent:	
And,	
(2) Please identify which of the product(s) of DEF2 infringe Claim 14 of the '431 Patent	
under the doctrine of equivalents:	

f. U.S. Patent No. 7,397,431 – Claim 30

Has Fractus proven by a preponderance of the evidence (in other words, that it is more	
likely than not) that DEF1 infringes Claim 30 of the '431 Patent either literally or under the	
doctrine of equivalents? YES NO	
If you answered YES to the question above:	
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 30 of the	
'431 Patent:	
And,	
(2) Please identify which of the product(s) of DEF1 infringe Claim 30 of the '431 Patent	
under the doctrine of equivalents:	
Has Fractus proven by a preponderance of the evidence (in other words, that it is more	
likely than not) that DEF2 infringes Claim 30 of the '431 Patent either literally or under the	
doctrine of equivalents? YES NO	
If you answered YES to the question above:	
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 30 of the	
'431 Patent:	
And,	
(2) Please identify which of the product(s) of DEF2 infringe Claim 30 of the '431 Patent	
under the doctrine of equivalents:	

g. U.S. Patent No. 7,394,432 – Claim 6

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 6 of the '432 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 6 of the '432
Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 6 of the '432 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 6 of the '432 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 6 of the '432
Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 6 of the '432 Patent
under the doctrine of equivalents:

h. U.S. Patent No. 7,528,782 – Claim 6

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 6 of the '782 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 6 of the '782
Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 6 of the '782 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 6 of the '782 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 6 of the '782
Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 6 of the '782 Patent
under the doctrine of equivalents:

i. U.S. Patent No. 7,528,782 – Claim 7

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 7 of the '782 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 7 of the '782
Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 7 of the '782 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 7 of the '782 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 7 of the '782
Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 7 of the '782 Patent
under the doctrine of equivalents:

j. U.S. Patent No. 7,528,782 – Claim 8³

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 8 of the '782 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 8 of the '782
Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 8 of the '782 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 8 of the '782 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 8 of the '782
Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 8 of the '782 Patent
under the doctrine of equivalents:

³ Kyocera Wireless Corp. and Kyocera Communications, Inc. are not accused of infringing claim 8 of the '782 patent and accordingly do not request any questions regarding infringement of this claim.

k. U.S. Patent No. 7,148,850 – Claim 22

Has Fractus proven by a preponderance of the evidence (in other words, that it is more		
likely than not) that DEF1 infringes Claim 22 of the '850 Patent either literally or under the		
doctrine of equivalents? YES NO		
If you answered YES to the question above:		
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 22 of the		
'850 Patent:		
And,		
(2) Please identify which of the product(s) of DEF1 infringe Claim 22 of the '850 Patent		
under the doctrine of equivalents:		
Has Fractus proven by a preponderance of the evidence (in other words, that it is more		
likely than not) that DEF2 infringes Claim 22 of the '850 Patent either literally or under the		
doctrine of equivalents? YES NO		
If you answered YES to the question above:		
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 22 of the		
'850 Patent:		
And,		
(2) Please identify which of the product(s) of DEF2 infringe Claim 22 of the '850 Patent		
under the doctrine of equivalents:		

l. U.S. Patent No. 7,148,850 – Claim 70

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 70 of the '850 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 70 of the
'850 Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 70 of the '850 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 70 of the '850 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 70 of the
'850 Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 70 of the '850 Patent
under the doctrine of equivalents:

m. U.S. Patent No. 7,202,822- Claim 8

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 8 of the '822 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 8 of the '822
Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 8 of the '822 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 8 of the '822 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 8 of the '822
Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 8 of the '822 Patent
under the doctrine of equivalents:

n. U.S. Patent No 7,312,762 – Claim 21⁴

Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF1 infringes Claim 21 of the '762 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 21 of the
'762 Patent:
And,
(2) Please identify which of the product(s) of DEF1 infringe Claim 21 of the '762 Patent
under the doctrine of equivalents:
Has Fractus proven by a preponderance of the evidence (in other words, that it is more
likely than not) that DEF2 infringes Claim 21 of the '762 Patent either literally or under the
doctrine of equivalents? YES NO
If you answered YES to the question above:
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 21 of the
'762 Patent:
And,
(2) Please identify which of the product(s) of DEF2 infringe Claim 21 of the '762 Patent
under the doctrine of equivalents:

⁴ Pantech Wireless, Inc. is not accused of infringing the '762 patent and accordingly do not request any questions regarding infringement of the '762 patent.

o. U.S. Patent No. 7,411,556 – Claim 40⁵

Has Fractus proven by a preponderance of the evidence (in other words, that it is more		
likely than not) that DEF1 infringes Claim 40 of the '556 Patent either literally or under the		
doctrine of equivalents? YES NO		
If you answered YES to the question above:		
(1) Please identify which of the product(s) of DEF1 <u>literally</u> infringe Claim 40 of the		
'556 Patent:		
And,		
(2) Please identify which of the product(s) of DEF1 infringe Claim 40 of the '556 Patent		
under the doctrine of equivalents:		
Has Fractus proven by a preponderance of the evidence (in other words, that it is more		
likely than not) that DEF2 infringes Claim 40 of the '556 Patent either literally or under the		
doctrine of equivalents? YES NO		
If you answered YES to the question above:		
(1) Please identify which of the product(s) of DEF2 <u>literally</u> infringe Claim 40 of the		
'556 Patent:		
And,		
(2) Please identify which of the product(s) of DEF2 infringe Claim 40 of the '556 Patent		
under the doctrine of equivalents:		

⁵ HTC Corporation and HTC America, Inc. are not accused of infringing the '556 patent and accordingly do not request any questions regarding infringement of the '556 patent.

1.2 QUESTION NO. 2—MARKING⁶

Answer Question No. 2 only if you answered "Yes" to one or more of the subparts of Question No. 1 as to DEF1's or DEF2's accused products, finding that DEF1 and/or DEF2 infringed one or more of the claims of the patents in issue. Otherwise, do not answer Question No. 2.

QUESTION NO. 2

Has Fractus proven by a preponderance of the evidence (in other words, that it is more likely than not) that substantially all of the products it made, offered for sale, or sold under the patents in issue were marked, and that Fractus made reasonable efforts to ensure that its licensees who made, offered for sale, or sold products under the patents in issue marked substantially all of their products.

U.S. Patent No. 7,015,868	Yes	_ No
If YES, by what date was Fractus's marking	substantially consist	tent and continuous:
U.S. Patent No. 7,123,208	Yes	_ No
If YES, by what date was Fractus's marking	substantially consist	tent and continuous:
U.S. Patent No. 7,397,431	Yes	_ No
If YES, by what date was Fractus's marking	substantially consist	tent and continuous:
II C. D N T. co	X 7	N
U.S. Patent No. 7,394,432	Yes	_ No
If YES, by what date was Fractus's marking	substantially consist	tent and continuous:

⁶ HTC Corporation and HTC America, Inc. are not accused of infringing the '556 patent and accordingly do not request any questions regarding marking of the '556 patent.

U.S. Patent No. 7,148,850	Yes	_ No	
If YES, by what date was Fractus's marking	substantially consist	ent and continuous:	
U.S. Patent No. 7,202,822	Yes	_ No	
If YES, by what date was Fractus's marking	substantially consist	ent and continuous:	
U.S. Patent No. 7,411,556	Yes	_ No	
If YES, by what <u>date</u> was Fractus's marking substantially consistent and continuous:			
II C D (1 N 7 212 7 C)	3 7	N	
U.S. Patent No. 7,312,762	Yes	_ N0	
If YES, by what date was Fractus's marking	substantially consist	ent and continuous:	

1.3 QUESTION NO. 3—REASONABLE ROYALTY

Answer Question No. 3A only if you answered "Yes" to one or more of the subparts of Question Nos. 1 as to DEF1's accused products, finding that DEF1 infringed one or more of the claims of the patents in issue. Otherwise, do not answer Question No. 3A.

QUESTION NO. 3A

What damages, stated in terms of a reasonable royalty, do you find Fractus has proven by a preponderance of the evidence (in other words, that it is more probable than not) were suffered as a result of DEF1's infringement as found by you in answer to Question No. 1?

a prop	onacian	or the evidence (in other words, that is a more producte than not) were surroused
as a re	sult of I	DEF1's infringement as found by you in answer to Question No. 1?
	1.	Reasonable Per-Antenna Royalty:
	2.	Total Number of Infringing Units:
	3.	Total Royalty Owed by DEF1
	Questi	r Question No. 3B only if you answered "Yes" to one or more of the subparts of on No. 1 as to DEF2's accused products, finding that DEF2 infringed one or more claims of the patents in issue. Otherwise, do not answer Question No. 3B. QUESTION NO. 3B
	What o	damages, stated in terms of a reasonable royalty, do you find Fractus has proven by
a prep	onderan	ce of the evidence (in other words, that it is more probable than not) were suffered
as a re	sult of I	DEF2's infringement as found by you in answer to Question No. 1?
	1.	Reasonable Per-Antenna Royalty:
	2.	Total Number of Infringing Units:
	3.	Total Royalty Owed by DEF2

1.4 QUESTION NO. 4—WILLFUL INFRINGEMENT⁷

Answer Question No. 4A only if you answered "Yes" to one or more of the subparts of Question No. 1 as to DEF1's accused products, finding that DEF1 infringed one or more of the claims of the patents in issue. Otherwise, do not answer Question No. 4A.

QUESTION NO. 4A

Do you find that the Plaintiff has proven by clear and convincing evidence (in other words, that it is highly probable) that DEF1's infringement was willful?

Patent	Did DEF1 willfully infringe? (Answer "Yes" or "No" but only for patents where you found infringement)
868 Patent	
209 Patent	
431 Patent	
432 Patent	
782 Patent	
850 Patent	
822 Patent	
762 Patent	
556 Patent	

⁷ HTC Corporation and HTC America, Inc. are not accused of willful infringement and accordingly do not request any questions regarding willfulness.

Answer Question No. 4B only if you answered "Yes" to one or more of the subparts of Question No. 1 as to DEF2's accused products, finding that DEF2 infringed one or more of the claims of the patents in issue. Otherwise, do not answer Question No. 4B.

QUESTION NO. 4B

Do you find that the Plaintiff has proven by clear and convincing evidence (in other words, that it is highly probable) that DEF2's infringement was willful?

Patent	Did DEF2 willfully infringe? (Answer "Yes" or "No" but only for patents where you found infringement)
868 Patent	intringement)
209 Patent	
431 Patent	
432 Patent	
782 Patent	
850 Patent	
822 Patent	
762 Patent	
556 Patent	

You have now reached the end of the verdict form and should review it to ensure it
accurately reflects your unanimous determinations. The Presiding Juror should then sign and
date the verdict form in the spaces below and notify the marshal that you have reached a verdict.
The Presiding Juror should retain possession of the verdict form and bring it when the jury is
brought back into the courtroom.

DATED:, 20 By: Presiding	Juror
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